

## SUBCHAPTER K—HOUSING

### PART 256—HOUSING IMPROVEMENT PROGRAM

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#### § 256.1 Purpose.

The purpose of the part is to define the terms and conditions under which assistance is given to Indians under the Housing Improvement Program (HIP).

#### § 256.2 Definitions.

As used in this part 256:

*Agency* means the current organizational unit of the Bureau that provides direct services to the governing body or bodies and members of one or more specified Indian tribes.

*Appeal* means a written request for review of an action or the inaction of an official of the Bureau of Indian Affairs that is claimed to adversely affect the interested party making the request, as provided in part 2 of this chapter.

*Applicant* means an individual or persons on whose behalf an application for services has been made under this part.

*BIA* means the Bureau of Indian Affairs in the Department of the Interior.

*Child* means a person under the age of 18 or such other age of majority as is established for purposes of parental support by tribal or state law (if any) applicable to the person at his or her residence, except that no other person who has been emancipated by marriage can be deemed a child.

*Cost effective* means the cost of the project is within the cost limits for the category of assistance and adds sufficient years of service to the dwelling to satisfy the recipient's housing needs well into the future.

*Disabled* means legally blind; legally deaf; lack of or inability to use one or

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more limbs; chair or bed bound; inability to walk without crutches or walker; mental disability in an adult of a severity that requires a companion to aid in basic needs, such as dressing, preparing food, etc.; or severe heart and/or respiratory problems preventing even minor exertion.

*Family* means one or more persons maintaining a household.

*Household* means persons living with the head of household who may be related or unrelated to the head of household and who function as members of a family.

*Independent trades person* means any person possessing the ability to perform work in a particular vocation.

*Indian* means any person who is a member of any of those tribes listed in the FEDERAL REGISTER pursuant to 25 CFR part 83, as recognized by and receiving services from the Bureau of Indian Affairs.

*Indian tribe* means an Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Pub. L. 103–454, 108 Stat. 4791.

*Permanent members of household* means adults living in the household that intend to live there continuously from now on and any children defined as a child in this part.

*Regional Director* means the officer in charge of a Bureau of Indian Affairs regional office or his/her authorized delegate.

*Secretary* means the Secretary of the Interior.

*Service area* means the reservations (former reservations in Oklahoma), allotments, restricted lands, and Indian-owned lands (including lands owned by corporations established pursuant to the Alaska Native Claims Settlement Act) within a geographical area designated by the tribe and approved by the Area Director to which equitable services can be delivered.

*Servicing housing office* means the tribal housing office or bureau housing assistance office administering the Housing Improvement Program in the service area in which the applicant resides.

*Standard Housing* means a dwelling that is decent, safe, and sanitary.

(1) Except as provided in paragraph (2) of this definition, standard housing must meet each of the following conditions:

(i) General construction must conform to applicable tribal, county, State, or national codes and to appropriate building standards for the region;

(ii) The heating system must have the capacity to maintain a minimum temperature of 70 degrees in the dwelling during the coldest weather in the area;

(iii) The heating system must be safe to operate and maintain and deliver a uniform heat distribution;

(iv) The plumbing system must include a properly installed system of piping and fixtures;

(v) The electrical system must include wiring and equipment properly installed to safely supply electrical energy for lighting and appliance operation;

(vi) Occupants per dwelling must not exceed these limits:

(A) Two bedroom dwelling: Up to four persons;

(B) Three-bedroom dwelling: Up to seven persons;

(C) Four-bedroom dwelling: Adequate for all but the very largest families;

(vii) The first bedroom must have at least 120 sq. ft. of floor space and additional bedrooms have at least 100 sq. ft. of floor space each;

(viii) The house site must provide economical access to utilities and must be easy to enter and leave; and

(ix) Aesthetics and access to school bus routes must be considered.

(2) The following exceptions apply to the standards in paragraph (1) of this definition:

(i) If access to a particular utility is not available and there is no prospect of access becoming available, then the standard relating to that utility does not apply; and

(ii) In regions of severe climate, the size of the house may be reduced to meet the region's applicable building standards.

*Substandard housing* means condition(s) exist that do not meet the definition of *standard housing* in this part of the rule.

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*Superintendent* means the Bureau official in charge of an agency office.

[63 FR 10134, Mar. 2, 1998, as amended at 64 FR 13896, Mar. 23, 1999; 67 FR 77920, Dec. 20, 2002]

### § 256.3 Policy.

(a) The Bureau of Indian Affairs housing policy is that every American family should have the opportunity for a decent home and suitable living environment. The Housing Improvement Program will serve the neediest of the needy Indian families who have no other resource for standard housing.

(b) Every Indian who meets the basic eligibility criteria defined in § 256.6 is entitled to participate in the program. Participation is based on priority of need, regardless of tribal affiliation.

(c) Tribal participation in and direct administration of the Housing Improvement Program is encouraged to the maximum extent possible. Tribal involvement is necessary to ensure that the services provided under the program are responsive to the needs of the tribes and the program participants.

(d) Partnerships with complementary improvement programs are encouraged to increase basic benefits derived from the Housing Improvement Program fund. An example is the agreement with Indian Health Services to provide water and sanitation facilities for Housing Improvement Program houses.

### § 256.4 Information Collection.

The information collection requirements contained in § 256.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.* and assigned clearance number 1076-0084. The information is collected to determine applicant eligibility for services and eligibility to participate in the program based on the criteria referenced in §§ 256.9 and 256.10. Response is required to obtain a benefit. The public reporting burden for this form is estimated to average thirty minutes per response, including the time for reviewing the instructions,

gathering and maintaining data, and completing and reviewing the form.

### § 256.5 What is the Housing Improvement Program?

The Housing Improvement Program is a safety-net program that provides grants for the cost of services to repair, renovate, replace, or provide housing. The program provides grants to the neediest of the needy Indian families who:

(a) Live in substandard housing or are without housing; and

(b) Have no other resource for assistance.

[67 FR 77920, Dec. 20, 2002]

### § 256.6 Am I eligible for the Housing Improvement Program?

You are eligible for the Housing Improvement Program if:

(a) You are a member of a Federally recognized American Indian tribe or Alaska Native village;

(b) You live in an approved tribal service area;

(c) Your annual income does not exceed 125 percent of the Department of Health and Human Services poverty income guidelines. These guidelines are available from your servicing housing office;

(d) Your present housing is substandard as defined in § 256.2; and

(e) You meet the ownership requirements for the assistance needed, as defined in § 256.8, § 256.9, or § 256.10;

(f) You have no other resource for housing assistance;

(g) You have not received assistance after October 1, 1986, for repairs and renovation, replacement or housing, or down payment assistance; and

(h) You did not acquire your present housing through participation in a Federal government-sponsored housing program that includes provision for the assistance referred to in paragraph (g) of this section.

[63 FR 10134, Mar. 2, 1998; 64 FR 13896, Mar. 23, 1999]

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### § 256.7 What housing services are available under the Housing Improvement Program?

There are three categories of assistance available under the Housing Improvement Program, as outlined in the following table.

Type of assistance	What it provides	Where to find information
Category A .....	Up to \$2,500 in safety or sanitation repairs to the dwelling in which you live, which will remain substandard. Can be provided more than once, but for not more than one dwelling and the total assistance cannot exceed \$2,500.	§ 256.8
Category B .....	Up to \$35,000 in repairs and renovation, which will bring your dwelling to Standard Housing condition, as defined in § 256.2. Can only be provided once.	§ 256.9
Category C .....	A modest dwelling that meets the criteria in § 256.11; and the definition of Standard Housing in § 256.2; and whose costs are determined by and limited to the criteria in 256.17(b). can only be provided once.	§ 256.10 & § 256.11.

[63 FR 10134, Mar. 2, 1998, as amended at 67 FR 77920, Dec. 20, 2002]

### § 256.8 When do I qualify for Category A assistance?

You qualify for interim improvement assistance under Category A if it is not cost effective to renovate the dwelling in which you live and if either of the following is true:

- (a) Other resources to meet your housing needs exist but are not immediately available; or
- (b) You qualify for replacement housing under Category C, but there are no Housing Improvement Program funds available to replace your dwelling.

[63 FR 10134, Mar. 2, 1998, as amended at 67 FR 77920, Dec. 20, 2002]

### § 256.9 When do I qualify for Category B assistance?

You qualify for repairs and renovation assistance under Category B if you meet the requirements of this section.

- (a) Your servicing housing office must determine that it is cost effective to repair and renovate the dwelling.
- (b) You must occupy the dwelling and must either:
  - (1) Own the dwelling; or
  - (2) Lease the dwelling with:

(i) An undivided leasehold (i.e., you are the only lessee); and

(ii) A leasehold that will last at least 25 years from the date that you receive the assistance.

(c) The servicing housing office must determine that the repairs and renovation will bring the dwelling to standard housing condition.

(d) You must sign a written agreement stating that, if you sell the dwelling within 5 years of the completion of repairs and renovation:

- (1) The assistance grant under this part will be voided; and
- (2) At the time of settlement, you will repay BIA the full cost of all repairs and renovation made under this part.

[63 FR 10134, Mar. 2, 1998, as amended at 67 FR 77920, Dec. 20, 2002]

### § 256.10 When do I qualify for Category C assistance?

- (a) You qualify for replacement housing assistance under Category C if you meet one of the four sets of requirements in the following table.

You qualify for Category C assistance if * * *	And * * *	And * * *
You own the dwelling in which you are living.	The dwelling cannot be brought up to applicable building code standards and to standard housing condition for \$35,000 or less.	
You lease the dwelling in which you are living.	Your leasehold is undivided and for not less than 25 years at the time that you receive assistance.	The dwelling cannot be brought up to applicable building code standards and to standard housing condition for \$35,000 or less.
You do not own a dwelling ...	You own land that is suitable for housing .....	The land has adequate ingress and egress rights and economical access to utilities.

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You qualify for Category C assistance if * * *	And * * *	And * * *
You do not own a dwelling ...	You have a leasehold on land that is suitable for housing and the leasehold is undivided and for not less than 25 years at the time you receive assistance.	The land has adequate ingress and egress rights and economical access to utilities.

(b) If you qualify for assistance under paragraph (a) of this section, you must sign a written grant agreement stating that, if you sell the dwelling within 10 years of assuming ownership:

(1) The grant under this part will be voided; and

(2) At the time of settlement, you will repay BIA the full cost of the dwelling.

(c) If you sell the dwelling more than 10 years after you assume ownership, the following conditions apply:

(1) You may retain 10 percent of the original cost of the dwelling per year, beginning with the eleventh year.

(2) If you sell the dwelling after the first 20 years, you will not have to repay BIA.

[63 FR 10134, Mar. 2, 1998, as amended at 67 FR 77921, Dec. 20, 2002]

**§ 256.11 What are the occupancy and square footage standards for a dwelling provided with Category C assistance?**

A modest dwelling provided with Category C assistance will meet the standards in the following table.

Number of occupants	Number of bedrooms	Total dwelling square footage <sup>1</sup> (maximum)
1-3 .....	<sup>2</sup> 2	900
4-6 .....	<sup>2</sup> 3	1050
7 or more .....	<sup>2</sup> 4	<sup>3</sup> 1350

<sup>1</sup>Total living space; does not include hallways or modest-sized bathrooms or closets.

<sup>2</sup>Determined by the servicing housing office, based on composition of family.

<sup>3</sup>Adequate for all but the very largest families.

[67 FR 77921, Dec. 20, 2002]

**§ 256.12 Who administers the Housing Improvement Program?**

The Housing Improvement Program is administered by a servicing housing office operated by:

(a) A Tribe, under a Pub. L. 93-638 contract or a self-governance annual funding agreement; or

(b) The Bureau of Indian Affairs.

**§ 256.13 How do I apply for the Housing Improvement Program?**

(a) First, you must obtain an application, BIA Form 6407, from your nearest servicing housing office.

(b) Second, you must complete and sign BIA Form 6407.

(c) Third, you must submit your completed and signed application to your servicing housing office. Submission to the nearest BIA housing office does not preclude tribal approval of the application.

(d) Fourth, you must furnish documentation proving tribal membership. Examples of acceptable documentation include a copy of your Certificate of Degree of Indian Blood (CDIB) or a copy of your tribal membership card.

(e) Fifth, you must provide proof of income from all permanent members of your household.

(1) You must submit *signed* copies of current 1040 tax returns from all permanent members of the household, including W-2's and all other attachments.

(2) You must provide proof of all other income from all permanent members of the household. This includes unearned income such as social security, general assistance, retirement, and unemployment benefits.

(3) If you or other household members did not file a tax return, you must submit a signed notarized statement explaining why you did not.

(f) Sixth, you must furnish a copy of your annual trust income statement from your Individual Indian Money (IIM) account, for royalty, lease, and other monies, from your home agency. If you do not have an account, you must furnish a statement from your home agency to that effect.

(g) Seventh, you must provide proof of ownership of the residence and/or land:

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(1) For fee property, you must provide a copy of a fully executed Warranty Deed, which is available at your local county court house;

(2) For trust property, you must provide certification from your home agency;

(3) For tribally owned land, you must provide a copy of a properly executed tribal assignment, certified by the agency; or

(4) For multi-owner property, you must provide a copy of a properly executed lease.

[63 FR 10134, Mar. 2, 1998, as amended at 67 FR 77921, Dec. 20, 2002]

### § 256.14 What are the steps that must be taken to process my application for the Housing Improvement Program?

(a) The servicing housing office must review your application for completeness. If your application is incomplete,

the office will notify you, in writing, what is needed to complete your application and the date it must be submitted. If you do not return your application by the deadline date, you will not be considered for assistance in that program year.

(b) The servicing housing office will use your completed application to determine if you are eligible for the Housing Improvement Program.

(1) If you are found ineligible for the Housing Improvement Program or otherwise do not qualify for the program, the servicing housing office will advise you in writing within 45 days of receipt of your completed application.

(2) If you are found eligible for the Housing Improvement Program, the servicing housing office will assess your application for need, according to the factors and numeric values shown in the following table.

Factor	Ranking factor and definition	Ranking description	Point descriptors
1 .....	Annual Household Income: Must include income of all persons counted in Factors 2, 3, 4. Income includes earned income, royalties, and one-time income.	Income/125% FPG <sup>1</sup> (% of 125% FPG) <sup>1</sup>	Points (maximum=40):
		0–25	40
		26–50	30
		51–75	20
		76–100	10
		101–125	0
2 .....	Aged Persons: For the benefit of persons age 55 or older, and Must be living in the dwelling.	Years of Age:	Points:
		Less than 55 .....	0
		55 and older .....	1 point per year of age over 54
3 .....	Disabled Individual: Any one (1) disabled person living in the dwelling. (The percentage of disability must be based on the average (mean) of the percentage of disabilities identified from two sources (A+B) of statements of conditions which may include a physician's certification, Social Security or Veterans Affairs determination, or similar determination).	% of Disability—(A% + B%/2): .....	Points (Maximum=20):
		100% .....	20
		or	
		Less than 100% .....	10
4 .....	Dependent Children: Must be under the age of 18 or such other age established for purposes of parental support by tribal or state law (if any). Must live in the dwelling and not be married.	Dependent Child—(Number of Children):	Points (Maximum = 5):
		1 .....	0
		2 .....	1
		3 .....	2
		4 .....	3
		5 .....	4
		6 or more .....	5

<sup>1</sup> FPG means Federal Poverty Guidelines.

(c) The servicing housing office will develop a list of the applications considered and/or received for the Housing Improvement Program for the current

program year. The list will include, at a minimum, sufficient information to determine:

(1) The current program year;

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(2) The number of applications considered and/or received;

(3) The eligible applicants, ranked in order of need, from highest to lowest, based on the total numeric value assigned according to the factors shown in table B. (In the case of a tie, the family with the lower income will be listed first);

(4) The estimated allowable costs of the improvements, repairs or replacement projects for the eligible applicants and the "Priority List," identifying which applicants will be served based on the amount of available funding, starting with the most needy applicant and continuing until the amount of available funding is depleted; and

(5) The applicants not ranked, with an explanation (such as reason for ineligibility or reason for incomplete application).

(d) Your servicing housing office will inform you in writing within 45 days of completion of the listing whether funding is available to provide Housing Improvement Program services to you in that program year.

(1) If funding is available, you will be provided appropriate information concerning the availability of Housing Improvement Program services.

(2) If funding is not available, you will be advised, in writing, and provided appropriate information concerning submission for the next available program year. At the option of your servicing housing office and when extenuating circumstances exist, your application can be carried forward, for one year, into the next program year. You will be advised that you must provide written confirmation that the information in your application is still accurate and that you must provide current income documentation for that application to be considered in the next program year.

(e) Your servicing housing office will prepare an annual report identifying construction work undertaken during the fiscal year and related construction expenditures. The annual report is due to the servicing regional office on the fifteenth day after the end of the fiscal year. The report, at a minimum, will contain:

(1) Number of Eligible Applicants;

(2) Number of Applicants Provided Service;

(3) Names of Applicants Provided Service;

(4) For Each Applicant Provided Service:

(i) Date of Construction Start;

(ii) Date of Construction Completion, if applicable;

(iii) Cost;

(iv) HIP Category.

[63 FR 10134, Mar. 2, 1998, as amended at 67 FR 77921, Dec. 20, 2002]

### **§ 256.15 How long will I have to wait for repair, renovation, or replacement of my dwelling?**

The length of time that it takes to accomplish the work to be done on your dwelling is dependent on:

(a) Whether funds are available;

(b) The type of work to be done;

(c) The climate and seasonal conditions where your dwelling is located;

(d) The availability of a contractor;

(e) Your position on the priority list; and

(f) Other unforeseen factors.

### **§ 256.16 Who is responsible for identifying what work will be done on my dwelling?**

The servicing housing office is responsible for identifying what work is to be done on your dwelling or whether your dwelling will be replaced. This includes responsibility to communicate and coordinate, through provision of the current Priority List, with the Indian Health Service, when it is the organization responsible for verifying the availability/feasibility of water and wastewater facilities.

### **§ 256.17 What will the servicing housing office do to identify what work is to be done on my dwelling?**

(a) First, a trained and qualified representative of your servicing housing office must visit your dwelling to identify what repairs or renovation are to be done under the Housing Improvement Program. The representative must ensure that flood, National Environmental Protection Act (NEPA) and earthquake requirements are met.

(b) Second, based on the list of repairs or renovation to be done, the representative must estimate the total

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cost of repairs or renovation to your dwelling. Cost estimates must be based on locally available services and product costs, or other regional-based, industry-recognized cost data, such as that provided by the MEANs or MARSHALL SWIFT. If the dwelling is located in Alaska, documented, reasonable, substantiated freight costs, in accordance with Federal Property Management Regulations (FPMR 101-40), not to exceed 100 percent of the cost of materials, can be added to the cost of the project.

(c) Third, the representative must determine which Housing Improvement Program category the improvements to your dwelling meet, based on the estimated cost of repairs or renovation. If the estimated cost to repair your dwelling is more than \$35,000, the representative must approve your dwelling for replacement or refer you to another source for housing. The other source does not have to be for a replacement dwelling; it may be for government-subsidized rental units or other sources for standard housing.

(d) Fourth, the representative must develop a detailed, written report, also called "bid specifications" that identifies what and how the repairs, renovation, or construction work is to be accomplished at the dwelling.

(1) When the work includes new construction, the "bid specifications" will be supplemented with a set of construction plans. The plans must not exceed the occupancy and square footage criteria identified in § 256.11. The plans must be sufficiently detailed to provide complete instructions to the builder for the purpose of construction.

(2) "Bid Specifications" are also used to inform potential bidders of what work is to be done.

[63 FR 10134, Mar. 2, 1998, as amended at 67 FR 77922, Dec. 20, 2002]

## § 256.18 How will I be advised of what work is to be done?

You will receive written notice from the servicing housing office of what work is being scheduled under the Housing Improvement Program. You will be requested to concur with the scheduled work by signing a copy of the notice and returning it to the servicing housing office. No work will be

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started until the signed copy is returned to the servicing housing office.

## § 256.19 Who performs the improvements, repairs, or replacement of my dwelling?

Independent or tribal repair or construction trades persons, home building contractors, or construction companies will perform the repairs, renovation, or replacement of your dwelling.

[63 FR 10134, Mar. 2, 1998, as amended at 67 FR 77922, Dec. 20, 2002]

## § 256.20 How are these repairs or construction trades persons, home building contractors, or construction companies selected and paid?

The servicing housing office must follow Federal procurement or other Bureau-approved tribal procurement policy. Generally, your servicing housing office develops a "bid specification" or statement of work, which identifies the work to be performed. The appropriate contracting office uses the "bid specification" to provide information and invite bids on the project to interested parties. The contracting office selects the winning bidder after technical review of the bids by and written recommendation from the servicing housing office, and after determination that the bidder is qualified and capable of completing the project as advertised.

(a) Payments to the winning bidder are negotiated in the contract and based on specified delivery of services.

(1) Partial payments will not exceed 80 percent of the value of the completed work.

(2) Final payment will be made after final inspection and after all provisions of the contract have been met, including punch list items.

## § 256.21 Will I have to vacate my dwelling while repair work or replacement of my dwelling is being done?

(a) You will be notified by the servicing housing office that you must vacate your dwelling only if:

(1) It is scheduled for major repairs requiring that all occupants vacate the dwelling for safety reasons; or

(2) It is scheduled for replacement which requires the demolition of your current dwelling.



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(b) If you are required to vacate the premises for the duration of the construction, you are responsible for:

- (1) Locating other lodging;
- (2) Paying all costs associated with vacating and living away from the dwelling; and
- (3) Removing all your belongings and furnishings before the scheduled beginning work date.

### **§ 256.22 How can I be sure that the work that is being done on my dwelling meets minimum construction standards?**

(a) At various stages of construction, a trained and qualified servicing housing office representative or building inspector will review the construction to ensure that it meets applicable minimum construction standards and building codes. Upon completion of each stage, further construction is prohibited until the inspection occurs and approval is granted.

(b) Inspections are, at a minimum, made at the following stages of construction:

- (1) Footings;
- (2) Closed in, rough wiring and rough plumbing; and
- (3) At final completion.

### **§ 256.23 How will I be advised that the repair, renovation or replacement of my dwelling has been completed?**

The servicing housing office will advise you, in writing, that the work has been completed in compliance with the project contract. Also, you will have a final walk-through of the dwelling with your servicing housing office representative. You will be requested to verify that you received the notice of completion of the work by signing a copy of the notice and returning it to the servicing housing office representative.

### **§ 256.24 Will I need flood insurance?**

You will need flood insurance if your dwelling is located in an area identified as having special flood hazards under the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 977). Your

servicing housing office will advise you.

[63 FR 10134, Mar. 2, 1998. Redesignated at 67 FR 77922, Dec. 20, 2002]

### **§ 256.25 Is my Federal government-assisted dwelling eligible for services under the Housing Improvement Program?**

Yes. You may receive services under the Housing Improvement Program if your home was purchased through a Federal government sponsored home program that does not include provision for housing assistance.

[63 FR 10134, Mar. 2, 1998. Redesignated at 67 FR 77922, Dec. 20, 2002]

### **§ 256.26 Can I receive Housing Improvement Program services if I am living in a mobile home?**

Yes. If you meet the eligibility criteria in § 256.6 and there is sufficient funding available, you can receive any of the Housing Improvement Program services identified in § 256.7. If you require Category B services and your mobile home has exterior walls of less than three inches, you must be provided Category C services.

[63 FR 10134, Mar. 2, 1998. Redesignated at 67 FR 77922, Dec. 20, 2002]

### **§ 256.27 Can Housing Improvement Program resources be supplemented with other available resources?**

Yes. Housing Improvement Program resources may be supplemented through other available resources to increase the number of Housing Improvement Program recipients.

[63 FR 10134, Mar. 2, 1998. Redesignated at 67 FR 77922, Dec. 20, 2002]

### **§ 256.28 What can I do if I disagree with actions taken under the Housing Improvement Program?**

You may appeal action or inaction by an official of the Bureau of Indian Affairs, in accordance with 25 CFR part 2. You may appeal action or inaction by tribal officials through the appeal process established by the servicing tribe.

[63 FR 10134, Mar. 2, 1998. Redesignated at 67 FR 77922, Dec. 20, 2002]